

386A.1-040 Mandatory rules.

- (1) Except as otherwise provided in subsection (2) of this section, relations among the statutory trust, the beneficial owners, and the trustees are governed by the governing instrument. To the extent the governing instrument does not otherwise provide, KRS 386A.1-010 to 386A.10-040 govern relations among the statutory trust, the beneficial owners, and the trustees.
- (2) The governing instrument may not:
 - (a) Eliminate the obligation of good faith and fair dealing in the governing instrument, but it may prescribe the standards by which the performance of the obligations are to be measured provided the standards are not manifestly unreasonable;
 - (b) Vary KRS 386A.1-050(3), (5), or (7);
 - (c) Vary the requirements of Subchapter 2 of this chapter;
 - (d) Vary KRS 386A.3-010;
 - (e) Negate KRS 386A.3-030(2);
 - (f) Except as provided therein, vary the provisions pertaining to series trusts in Subchapter 4 of this chapter;
 - (g) Vary KRS 386A.5-010(2);
 - (h) Vary KRS 386A.5-020(2);
 - (i) Vary KRS 386A.5-030(3);
 - (j) Vary the standards of conduct for trustees under KRS 386A.5-050, but the governing instrument may prescribe the standards by which good faith, best interests of the statutory trust, and care that a person in a similar position would reasonably believe appropriate under similar circumstances are determined, if the standards are not manifestly unreasonable;
 - (k) Vary KRS 386A.5-070, but the governing instrument may provide a mechanism for prior approval, upon full disclosure, of a transaction with a covered party by at least two (2) disinterested trustees or the disinterested beneficial owners;
 - (l) Restrict the right of a trustee to information under KRS 386A.5-080, but the governing instrument may prescribe the standards for assessing whether information is reasonably related to the trustee's discharge of the trustee's duties as trustee, if the standards are not manifestly unreasonable;
 - (m) Vary KRS 386A.5-100(2);
 - (n) Vary KRS 386A.5-110(3) and (4);
 - (o) Vary KRS 386A.6-010(4);
 - (p) Restrict the right of a judgment creditor of a beneficial owner to seek a charging order under KRS 386A.6-060;
 - (q) Provide indemnification, advancement of expenses, or exoneration for conduct involving bad faith, willful misconduct, self-dealing, reckless indifference, approval or consent to a distribution violating KRS 386A.6-080,

or a transaction from which the trustee derived an improper personal benefit or in which the trustee's personal financial interest was in conflict with those of the statutory trust;

- (r) Permit a trustee to follow a direction that is contrary to the terms of the governing instrument or would constitute a breach of fiduciary duty by the trustee;
- (s) Vary KRS 386A.6-080(3), (4), (6), or (7);
- (t) Vary KRS 386A.6-090;
- (u) Restrict the right of a beneficial owner to information under KRS 386A.6-100, but the governing instrument may prescribe the standards for assessing whether information is reasonably related to the beneficial owner's interest, if the standards are not manifestly unreasonable;
- (v) Restrict the right of a beneficial owner to bring an action under KRS 386A.6-110;
- (w) Vary Subchapter 7 of this chapter;
- (x) Except to the extent expressly provided therein, vary Subchapter 8 of this chapter;
- (y) Vary Subchapter 9 of this chapter; or
- (z) Vary Subchapter 10 of this chapter.

Effective: July 12, 2012

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